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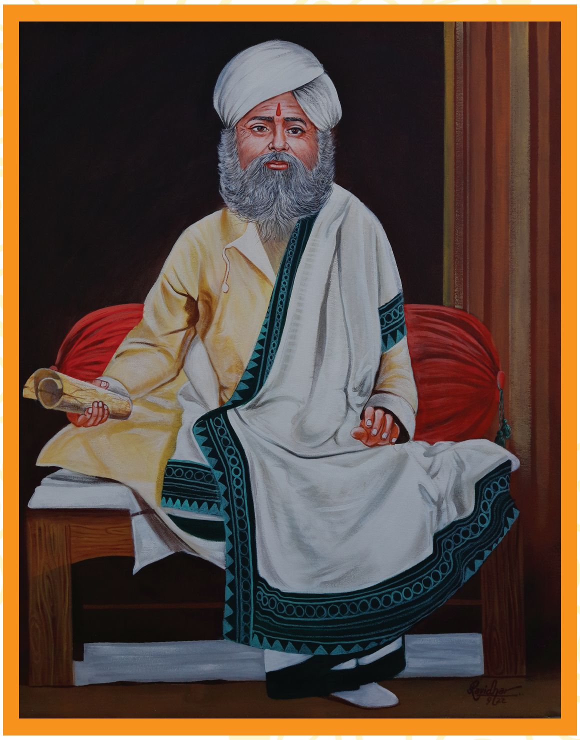
# Pavak

JONARAJA INSTITUTE OF GENOCIDE & ATROCITIES STUDIES
जातिरक्षानिर्मितं

## Unlocking Clarity:

### Examining the legal course of action through Genocide Convention

## **Preventing Genocide:** *Examining the Impact of the United Nations Convention and National Responses in Incorporating Genocide Prevention into Municipal Law*



अपथ्याशीवबालःसामन्तसहितस्ततः।
जनानाम जातिविध्वंसे सूहभट्टः कृतोद्यमः।

- Pandit Jonaraja, Father of Genocide Studies

**Pandit Jonaraja**, the author of second Rajtarangini that follows the Rajtarangini of Kalhan, was a Kashmiri Shaivite Bhatta Brahmin. His real name was Jyotsanakar, meaning the creator of moonlight. This poetic name was true to his being. He was an exceptional and sensitive poet, well versed in history, astrology, Ayurveda, Yoga and subtler aspects of all these disciplines. He was a renowned Sanskrit scholar. His year of birth as per the records available is estimated as 1389-90.

Like Kalhan he has written the history of Kashmir in poetry. That is not all there is about him. He has recorded the genocide of Kashmiri Pandits in detail and delineated its aspects like the present day genocide scholars.

**Jati Vidhwans**—this is the word Jonaraja has coined to describe genocide. He has defined genocide and his definition almost mirrors the definition given by Raphael Lemkin. He has even pointed out the special intent that motivates the perpetrator and given a very sensitive and vivid account of how an ideology radicalises a regime and effects a total change in its mode of operation that leads to genocide. He has made it clear that the mind of a perpetrator is at a very low level of maturity. That is the view held by present day genocide scholars also. He has defined genocide and his definition is almost equal to the definition given by Raphael Lemkin. His account of the first exodus of Kashmiri Pandits, if placed in correct context, is no different from the atrocities the community faced in 1990.

Roots of the field of genocide studies are found in Pandit Jonaraja. He in every sense is "**Father of Genocide Studies**."

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# VOLUME I

## issue III

01 **From the Editor's Desk**
Laws of Genocide - Limitations and Constraints | **Sunanda Vashisht**

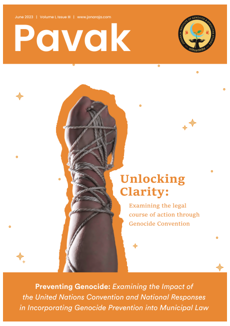
02 **Message from the Chairman**
Journey into Accountability: Exploring the Genocide Convention through International Legal Perspectives | **Tito Ganju**

03 **Message from the Director**
The Concept of "Man" in UNCG and Prevention of Genocide | **Dr. Dileep Kumar Kaul**

05 **The UN Genocide Convention & India's Role, Response & Responsibility**
by Nitin Dhar

06 **Q&A with scholars of JIGAS**
with Virender Dev Singh

07 **Research Snapshots**
with Dr. Neha Kachroo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# Laws of Genocide - Limitations and Constraints

> “Genocide often emerges from deep-seated ethnic, religious, or political conflicts with complex historical contexts. Laws alone cannot address these underlying causes, which require comprehensive approaches that involve diplomacy, conflict resolution, and addressing grievances.”

**Sunanda Vashisht**
Editor-in-Chief, Pavak

The issue of genocide is a deeply complex and tragic one. The western nations grappled with the ‘Crime that is so serious and dehumanizing and that has no name’ only post Second World War. India had faced genocides in its long history of invasions and enslavement and understood the nature of Genocide-gravest crime against human kind. Father of Genocide Studies in India, Pandit Jonaraja had already defined ‘Jaati Vidhans” in his Dwitya Rajtarangini long before Raphael Lemkin coined the word ‘Genocide” and had explained how genocide can be identified and its destructive effect on victims.

Genocide is now understood as gravest of all crimes in all parts of the world yet even after that understanding and awareness; Genocides have not been prevented and continue to happen as we write this. If the nature of crime is understood and if there exists a loose consensus on the definition of genocide then why have Genocides not been prevented? This is what we will address in this third issue of Pavak. If the laws on prevention of genocide exist then why are they ineffective in preventing such atrocities? While it is understood that laws alone cannot guarantee the prevention of genocide, they play a crucial role in establishing the framework for accountability, justice, and deterrence. Have the current laws succeeded in establishing accountability or do we require visiting these laws again.

International law recognizes genocide as a crime under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide. This convention defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. It obligates states to prevent and punish genocide, both through domestic legislation and by cooperating with international efforts. However, despite these legal frameworks, genocides have occurred throughout history, and the prevention and response to such crimes have often been inadequate. The scholarly articles that you will find in this edition of Pavak will diligently breakdown the convention, how it came into being and the legal framework it stands on. The articles will explain these articles through the western lens and Indic lens and spark a debate on whether a rethink is required.

Here I briefly put forward the limitations and constraints of current laws that need debate and deliberations in order to make them more effective and infuse accountability:-

- While the United Nations codified the definition and laws of genocide, the enforcement of any international law is complex and relies on the cooperation of sovereign states. Political considerations, power dynamics, and the reluctance of some states to intervene can hinder effective enforcement of laws. The Genocide convention does not effectively address these complexities in geo politics and domestic political considerations. Some individuals responsible for genocide may enjoy diplomatic immunity or protection under national or international laws, which can hinder the prosecution process. Immunity granted to high-ranking officials, political leaders, or members of the military can create barriers to accountability and justice. Without addressing these factors, Genocide convention will always remain an exalted piece of legislation with little teeth on ground.
- The convention does not effectively give tools to Identify and respond to the warning signs of potential genocides. This is a major flaw that has made the genocide ineffective. The convention needs to come up with a easily recognizable early warning signs and then elaborate on the response mechanism in case the sovereign state fails to recognize or acknowledge the early warning signs.
- The effectiveness of international institutions, such as the United Nations and its Security Council, can be limited by political divisions and the veto power of the permanent members. This can hinder timely and decisive action to prevent or halt genocidal acts. This requires a genuine reform in institutions of global governance especially the United Nations. Reforming the UN might seem an insurmountable task at the moment but when we are talking about preventing potential genocides can any task seem too big if all major countries decide to get together. The enforcement of genocide laws can be influenced by political considerations. In some cases, powerful states may have political or economic interests in protecting or supporting individuals or groups accused of genocide, making it difficult to hold them accountable. This can result in a lack of political will to pursue investigations or prosecutions.
- Bringing perpetrators of genocide to justice can be challenging due to issues like limited access to evidence, the reluctance of states to extradite suspects, and the absence of a centralized judicial authority with universal jurisdiction. The convention as it is codified today does not give any institution the power of centralized judicial authority because that will clash with the sovereignty of the nations. Genocide laws often face jurisdictional challenges, especially when the crimes are committed in a different country or when the perpetrators are nationals of a different country. Prosecuting individuals involved in genocide can be difficult if there are no cooperation or extradition agreements between countries or if the countries where the crimes occurred do not have the legal framework to prosecute them. Prosecuting genocide cases requires gathering substantial evidence, often from hostile environments or situations where evidence may have been destroyed. Collecting evidence can be challenging due to the reluctance of witnesses to come forward, lack of documentation, or the destruction of evidence during the commission of the crime. However, if all major economies of the world can come together and create an entity like World Trade Organization that ensures globalized economy while respecting sovereignty of nations can the major democracies of the world not come together to form a World anti Genocide Convention that will address the issue of sovereignty and central judicial authority with universal jurisdiction. At least an idea can be planted with initiating debates.
- Genocide often emerges from deep-seated ethnic, religious, or political conflicts with complex historical contexts. Laws alone cannot address these underlying causes, which require comprehensive approaches that involve diplomacy, conflict resolution, and addressing grievances. This will require involvement of civil societies and former and current diplomats and scholars of conflict resolution to come together and instead of deep maze of bureaucracy find a way to address conflicts. Genocide cases require significant time, resources, and expertise to investigate and prosecute effectively. However, there may be limitations in terms of the availability of resources, both financial and human, to carry out comprehensive investigations and trials. Additionally, there may be delays in initiating legal proceedings due to political or logistical obstacles. Not all states have state capacity to address these issues, However the humankind cannot wait for States to build state capacity beg-fore scourge of genocide is dealt with. This is where global citizenry can find a way to effectively work with the state and find ways to enforce laws and prevent genocides.

While genocide convention serves as an important framework for addressing such grave crimes, these limitations and constraints highlight the complex nature of prosecuting and preventing genocide effectively. Overcoming these challenges requires continued international efforts, cooperation, and the commitment of nations to uphold justice and accountability. It is important to continue strengthening legal frameworks, improving early warning mechanisms, promoting accountability, and addressing the root causes of conflicts to minimize the occurrence of genocide in the future.

# Journey into Accountability: Exploring the Genocide Convention through International Legal Perspectives

> **“The Convention also recognizes that certain groups are more vulnerable to genocide than others, and provides special protection for these groups. These groups are referred to as "protected groups" and include national, ethnic, racial and religious groups.”**

**Tito Ganju**
Chairman, JIGAS

The term "genocide" was coined by the Polish scholar Raphael Lemkin in 1944, in his book Axis Rule in Occupied Europe. He used the term to describe the Nazi's practice of extermination, which aimed to destroy national groups. According to Lemkin, the intent to destroy a group is what distinguishes genocide from other crimes. His definition was applicable to the acts of the Nazis, who treated people not as individuals but as members of specific groups.

In the post-war Nuremberg trials, genocide was not mentioned explicitly, but acts that would now be defined as genocide were described as criminal acts. Later trials against lower-rank Germans, such as The Justice case, were the first to explicitly convict defendants of genocide.

The UN General Assembly put the question of genocide on its agenda during its first session in 1946. The matter was referred to the 6th committee, which submitted a draft resolution unanimously adopted on December 11, 1946. The resolution affirmed that genocide is a crime under international law, and that principals and accomplices, whether the crime is committed on religious, racial, political, or any other ground, are punishable. The resolution defined genocide as a "denial of the right of existence of entire human groups," and requested the Economic and Social Council to prepare a draft convention on the crime of genocide.

Resolution 96 (I) has been used and cited frequently in subsequent instruments and judicial decisions and can be seen as codifying customary principles of international law. However, caution is advised in interpreting its scope of protection.

A first draft of a convention text was created by the Secretariat's Human Rights Division with help from three invited experts, including Raphael Lemkin. The draft contained definitions of protected groups, acts of genocide, and punishable offenses. The protected groups were racial, national, linguistic, religious, or political groups of human beings. The acts of genocide were divided into physical genocide (acts causing death or injury), biological genocide (restriction of birth), and cultural genocide (destroying the special characteristics of the groups).

The UN Ad Hoc Committee modified the draft text, and the General Assembly's 6th Committee made significant changes to the definition of genocide in Article II and III. Political groups were excluded, and ethnic groups were included instead. The concept of cultural genocide was also excluded, limiting the punishable acts to physical and biological genocide. The resulting draft convention was unanimously adopted by the General Assembly on December 9, 1948.

### Genocide Convention:

What is the Genocide Convention, and how is genocide defined in the Convention? What is the relationship between the Convention and customary international law?

The Genocide Convention is an international treaty that aims to prevent and punish the crime of genocide. It was adopted by the United Nations General Assembly in 1948 and has been ratified by 149 states as of 2021.

Genocide is defined in Article II of the Convention as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group."

The Convention is considered an authoritative codification of the basic legal principles relating to genocide. However, not all states are parties to the Convention. Therefore, the question of its relationship to customary international law is of significance to national, ethnic, racial, and religious groups in countries not parties to the Convention. According to Article I of the Convention, parties "confirm that genocide, whether committed in time of peace or war, is a crime under international law." This suggests that genocide is considered a crime under customary international law, independent of the Convention. The International Court of Justice has also stated that the principles underlying the Convention are recognized by civilized nations as binding on states, even without any conventional obligation, indicating that genocide is part of international customary law.

### Protected groups in the Genocide Convention:

The Convention also recognizes that certain groups are more vulnerable to genocide than others, and provides special protection for these groups. These groups are referred to as "protected groups" and include national, ethnic, racial and religious groups.

The Convention does not provide a comprehensive definition of these protected groups, but tribunals and other international bodies have provided guidance on their meaning. For example, the International Criminal Tribunal for the former Yugoslavia (ICTY) has held that a protected group is a group of persons who share a common characteristic such as race, ethnicity, nationality, religion, or language, and who have a distinct identity based on that characteristic. The ICTY has also clarified that the Convention protects both "majority" and "minority" groups. A "majority" group refers to a group that constitutes the majority of the population of a given area, while a "minority" group refers to a group that constitutes a numerical minority of the population. The Convention also protects sub-groups within these larger groups, such as different ethnic or religious groups within a larger national group.

In addition to national, ethnic, racial and religious groups, the Convention also recognizes that other groups may be subject to genocide. The Convention's preamble states that genocide is a crime against "humanity" and that the protection of all groups is important. This has been interpreted by tribunals to mean that other groups, such as political or social groups, may also be protected by the Convention.

The Convention's protection of these groups is significant because it recognizes that certain groups are more vulnerable to genocide than others. For example, ethnic or religious minorities may be at greater risk of genocide because they are perceived as a threat to the dominant group or because they are geographically isolated and easier to target. By providing special protection for these groups, the Convention seeks to prevent and punish acts of genocide against them.

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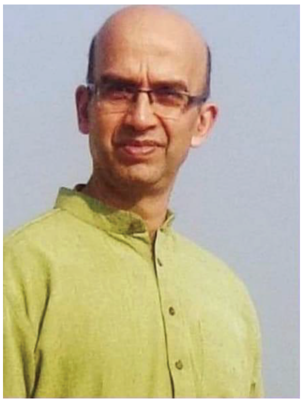
# The Concept of “Man” in UNCG and Prevention of Genocide



“The existence of man begins with the five basic elements called Mahabhutas: Prithvi (Earth), Jala (Water), Tejas (Fire), Vayu (Air), Akash (Ether). Ether is a non-perceptible element, a state of emptiness filled with the other four elements. These elements are the basis of the existence of the whole universe.”

**Dr. Dileep Kumar Kaul**
Director, JIGAS

United Nations Convention on the Prevention and Punishment of the Crime of Genocide in its Article II underlines five acts as genocide if committed with an intent to destroy, in whole or in part, a national, ethnical, racial or religious group. The first act in the list is : Killing members of the group. It can be easily inferred that these members or even one member is killed because he is a part of a national, ethnical, racial or religious group. These four categories cannot exist without a place. Nation is primarily a place because it cannot exist without a land-based territory that is occupied by a group or groups of people dwelling in it, and referred to as “country” by them. Man, belonging to any group is a “placed” man who ascribes meanings to a territory he lives in an makes that part of land his place.

The man described in the genocide convention is a biological man hanging in the air. The concept of place if any is very faint in the convention. In Article II (c), the conditions of life deliberately inflicted on the group to bring about its physical destruction are talked about. The physical, biological destruction is emphasized here though the conditions of life are talked about which are not possible without living in a “place.” The conditions of life can never be without a culture but culture of man has no place in the convention. Cultural genocide though present in the first two drafts was eliminated from the final draft under pressure from the countries like USA. So the concept of man in the convention of a physical, biological man devoid of any other attributes.

To understand the concept of “placed” human existence it will be apt to turn to the discussion of basic elements give in the Shaivite philosophy of Kashmir. The existence of man begins with the five basic elements called Mahabhutas: Prithvi (Earth), Jala (Water), Tejas ( Fire), Vayu ( Air), Akash (Ether). Ether is a non-perceptible element, a state of emptiness filled with the other four elements. These elements are the basis of the existence of the whole universe.

Corresponding to these five Mahabhutas are five Tanmatras. These elements correspond to Five Mahabhutgas. Gandha (Smell) arises from earth. Rasa (Taste) arises from water. Roopa (form) arises from fire, sparsha (Touch) from air, Sabda ( sound) from Akasha Tanmatra. These Tanmatras are no actually smell, taste, form, touch and sound but the abodes of these. Then come five Karmendriyas or organs of action–Vak, Pani, pada, Payu, and Upastha. Vak is speech, Pani is the action of give and take, Pada is foot the organ of movement. Payu are the organs of excretion. Upastha are the organs of sex and urination. Then come the five organs of cognition, through which we experience the world. Ghrana is the organ of smell that is nose. Rasana is tongue, the organ of taste. Chakshu is the organ of vision and Tvak is skin, the organ of touch. Shrotra is the organ of hearing that is ear.

These are the twenty elements that make the physical man. The UNCG is limited to this physical man and aims at preventing it. But there is much more than this to the existence of man. The other than material aspect begins after these twenty elements. We come to three antahkarnas, the internal doers or organs–Manas (Mind), Buddhih ( intellect), and ahamkara ( the sense of ego). Manas creates thoughts, Buddhih gives the sense of wrong or right and Ahamkara is the ‘I’consciousness, the sense of ego, the consciousness of personal identity. It is from here that we begin to see and cognise the world in all objectivity. We begin to see things as they appear.

This takes us to two interdependent elements of prakriti and purusha. Prakriti is nature. Purusha responds to Prakriti to make his place in it. He feels the nature, understands its miraculous operations and is amazed and delighted with the play of nature. Ahamkara observes the nature with objectivity and Purusha feels and acts according to the spirit of it. It is this feeling towards Prakriti that binds him with five more elements called five Kanchukas–Niyati, Kaala, Raaga, Vidya and kalaa. Niyati is living in a particular place and not living at every place. Wherever you live, the basic place of your dwelling, your birth place becomes your destiny. This limitation of place remains forever with purusha. Kaala is time, your history, your life in continuity. Your place and time spent in it gives rise to attachments which are termed as raaga. Purusha does not feel complete without these attachments. Vidya is knowledge and kalaa is art. All these are elements of culture without which a man can never exist. After these come higher spiritual pursuits which are a far away thing for genocide convention that allows almost no room for even the basic culture of man.

Kashmiri Shaivism sees man in his wholeness and is a unique line of thought in Indian analytical tradition. The elements are human existence given above are true of every human being irrespective of caste, creed and colour. It does not limit the existence of man to mere physical realm but sees it as multidimensional whole. The Genocide convention keeps the path of cultural genocide open that since the inception of the conventions has led to the erasure of many humans from many places on this earth.

When the question of cultural genocide was being discussed in UN General Assembly some delegates found that the idea was ridiculous. These nations might have participated in the destruction of cultural groups which they felt was necessary to civilize such groups. Danish representative Per Federspiel had objected, “It would show the lack of logic and of a sense of proportion to include in the same convention both mass murders in gas chambers and the closing of libraries.” That is clearly a prejudicial view centred on physical annihilation of man.

About six hundred years back, Srivara, the disciple of Pandit Jonaraja had analysed this situation without losing the sight of the fact that libraries are the extensions of human existence. Books, authors and readers are all rooted in a place. The loss of books renders readers and the authors meaningless and the place is completely destroyed. When books are burnt the destruction of the community begins. Srivara writes in his Rajtarangini:

**śekandhara dharānātho yavanaih preritah purah |**
**pustakāna sakalāna sarvāmstrnānyagnirivādāhata | 5/75**

(Sultan Sikander the Muslim King out of his muslim motivations set all books afire, everywhere as if dry grass was being burnt.)

**kimanyada dvijavada deśe sarve granthā manoramāh |**
**kathāvaśesatām yātāh padmānīva himāgame | 5/77**

(what more should I say...in this country (place) all books became non-existent just like the brahmins who authored and studied them. The story of books and Brahmins stood finished just like the lotus flowers destroyed after a heavy snowfall.)

*contd. on pg. 4*

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## Journey into Accountability: Exploring the Genocide Convention through International Legal Perspectives

The Convention also recognizes that genocide may be committed in different ways. For example, genocide may be committed through mass killings or by imposing conditions of life that are designed to destroy the group. The Convention's definition of genocide is therefore broad enough to cover a range of different acts, which reflects the fact that genocide can take many different forms. Tribunals and other international bodies have played an important role in interpreting and applying the Convention's provisions. For example, the ICTY has been responsible for prosecuting individuals accused of committing genocide during the conflicts in the former Yugoslavia in the 1990s. In these cases, the ICTY has relied on the Convention's definition of genocide and its protection of vulnerable groups to hold perpetrators accountable for their crimes. The International Criminal Court (ICC) also has jurisdiction over genocide cases, and has played a role in clarifying the meaning of the Convention's provisions. For example, the ICC has clarified that the term "mental harm" in the Convention's definition of genocide includes acts such as torture, rape, and sexual violence. The ICC has also held that the Convention's definition of genocide includes acts committed during peacetime, not just during armed conflicts.

### Criticism:

The Genocide Convention was established in 1948 in the aftermath of World War II to prevent and punish the crime of genocide. The Convention's definition of genocide includes the intent to destroy, in whole or in part, national, ethnic, racial, or religious groups. However, there are certain groups that are not included in the definition, such as political groups, linguistic groups, cultural groups, economic groups, and groups defined by sexuality. This omission has been heavily criticized, and there have been calls to amend the Convention to include these groups.

The lack of protection for political groups in the Convention has been a particular cause for concern. Critics argue that this omission insulates political leaders from being charged with the very crime they are most likely to commit: the extermination of politically threatening groups. The destruction of political groups is forbidden in the customary norm of crimes against humanity, but the omission of political groups from the Genocide Convention leaves a dangerous loophole that any government could exploit. They could put genocide into practice under cover of measures taken against political or other groups for reasons of national security, public order, or any other reason of state.

Some commentators have suggested that political ideology, which was regarded as less stable at the time of the drafting of the Genocide Convention, is now regarded as an integrated and immutable part of human identity. They argue that political groups should be treated like religious groups, since a distinguishing mark for both groups is the common beliefs that unite their members. However, others, like Schabas, argue that the exclusion of political groups from the Convention is in no way a license to eliminate them.

According to the International Law Commission (ILC), who rejected an amendment to the Convention, "persecution directed against members of a political group could still constitute a crime against humanity." Therefore, even though political groups are excluded from the Convention's definition of genocide, they are still protected under other international law norms.

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## The Concept of “Man” in UNCG and Prevention of Genocide

The experience of suffering is tied to place and matter. Genocide is anchored in place, so is remembering and mourning. Books as a knowledge material here are the extension of the Brahmins who nurtured the tradition of books, tradition of knowledge which is one of the five Kanchukas of Kashmir Shaivashastra explained above. When books as the records of knowledge are destroyed the path is clear for the destruction of the knowledgeable ones, the dwijas, the Brahmins.

The process continued and the destruction of dwijas, the Brahmins was completed in Kashmir in 1990. Almost no Brahmin is left in Kashmir now. The genocide of Kashmiri Pandits is complete. The fact stands proved that the destruction of books, the cultural elements leads to the physical annihilation of the authors and readers. The historical process has proved Per Federspiel wrong. In view of this historical fact, which may have parallels in other parts or world as well. The genocide convention needs a revision to include a holistic view of human existence. Otherwise the prevention of genocide will be as one sided as the concept of man in the convention. Article XVI of the convention allows for a revision if a contracting party wishes to do so. India should take a lead in this direction.

Kashmiri Pandit community has taken a lead in this matter. Panun Kashmir’s Genocide and Atrocities Prevention Bill was proposed by the community in 2020. Panun Kashmir is a concept articulated in exodus by the community to return to the homeland of Kashmir after the Kashmiri Pandit community had to leave Kashmir after the seventh wave of genocide in 1990. The idea took roots about six centuries back when with the first wave of genocide Pandit Jonaraja had to write :

**kaśmīra deśācārānām dhvamsoatha yavanaih krtah ‖ 575**

It was from that very day that Kashmiri Pandits must have begun to think that deśācār, their place behaviour, their place identity stood destroyed and they had to find their own place to live and preserve their existence that their place, their own Kashmir had granted them. This ages old civilizational urge is articulated in the idea of Panun Kashmir. Panun Kashmir’s Genocide and Atrocities Prevention Bill-2020 is not aimed at punishing just the perpetrators in Kashmir. It is aimed at serving every community in the world, not just to prevent their physical annihilation, but cultural and economic annihilation also. Though it has taken Art. II and Art III of the genocide convention as the basis of the explanation of the crime of genocide yet it is based on a holistic view of the existence of man. It can serve as the base material for the revision of the genocide convention.

Many Parliaments have written their genocide laws in their own words though many like Israel, Germany, UK and Hungary have taken Article II Verbatim with some change in language. Though some states have altered the definition given in Article II yet no objections have been raised by anybody regarding those alterations. In Spain the definition includes two acts not specified in Article II: Sexual assault on a member of the group, and forced removals of the group or of members. This was because Spanish Parliament framed the law after the Bosnian war in which there were too many sexual assaults and forced removals of the members of the groups. Spanish Parliament took a wider, international cultural sphere and its morbidities into consideration while framing its preventive laws.

Israel is an example of the determination of a state to punish the perpetrators of genocide. It had a law adopted in 1950 that took in the Article II of the convention but it could be applied only to the acts committed after 1950. Israel adopted another statute in 1950 that was called the Nazis and Nazi Collaborators (Punishment) Law. The law dealt with war crimes, crimes against humanity and the crimes against the Jewish people. This law allowed retroactive action, specifically for the period of World War II. It also included punishments for cultural genocide clearly enunciated as a category of punishable acts: destroying or desecrating Jewish religious or cultural assets or values. Adolf Eichmann was convicted under this statute. Israel took both physical and cultural destruction into consideration in this statute. Colonial powers had opposed the inclusion of cultural genocide into the convention to avoid getting implicated into the crime of genocide. Much water has flowed down all rivers in the world since then. There are countries, who, while framing their laws against the genocide have gone with the fact that it is not possible to frame their laws with a convention that aims to prevent just the biological genocide of man. They have taken it as just a guideline that it actually is. We need to understand that biology and culture of man are intertwined, ever active, simultaneously. They never act without each other. So that when some cultural thing is destroyed our biological system feels the pain. Who can deny that the hand of culture immediately takes over when a child is delivered from the womb on the hands of a doctor or a midwife.

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# The UN Genocide Convention & India's Role, Response & Responsibility

**"Crimes should not be punished by the victims, but should be punished by court, by international law"**
- Dr Raphael Lemkin.

Crime has been an integral part of human history. With time, as humans evolve, nature of crime also evolves. In the modern world where democracy, law & order and human rights are considered to be the parameters of a civilized nation, crime has also taken modern form, medium and meanings. Genocide, as we study it today, is known to be 'the ultimate crime' or 'the crime of crimes'. There is hardly any heinous crime which one can imagine of that has, or could possibly not be a part of genocide. In other words, there is no crime that one can imagine to be more brutal and destructive to the humankind as genocide is. The 'United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948' is therefore one of the greatest examples of global consensus against such a crime. In a world where terrorism is yet to be defined at a world stage, genocide has not just been defined but has also become part of the international law. Barring 41 United Nations member states, the Genocide Convention has been ratified or acceded to by 153 States (as of April 2022, with Zambia). After a series of disappointments from most of the western word, Dr. Raphael Lemkin, founder of the Genocide Convention, received help from three nations to sponsor the convention at the United Nations in 1948. These three nations included Cuba, Panama and India.

### What the Genocide Conventions means to the modern world

The systems we have in place today may also be measured for their importance by drawing the comparison in possibilities they have created for the present with the consequences the world would have to bear in their absence. The United Nations Convention on the Prevention and Punishment of the Crime of Genocide has created a strong deterrent against the crime of genocide internationally. It empowers member states to not only punish and prevent the crime of genocide within their territory but even outside of it. Preventing genocide is a therefore a global cause and the adoption of the Genocide Convention on the 9th of December 1948, is a moment that made this a possibility today. The convention does not just define the crime of genocide in its Article II, but also lays down framework for the world to punish and prevent it by law. Article III of the convention categorizes an act punishable not just that of genocide but also other acts such as: conspiracy to commit genocide; direct and public incitement to genocide; attempt to commit genocide; complicity in genocide. What does this mean? It means that the convention also criminalizes those acts that can lead to genocide or acts that enable such a crime, therefore providing serious deterrence to the commitment of the crime in its early stages such as attempt and/or incitement.

This follows with Article IV of the convention that states, "Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals." Article IV, hence makes it clear that the act of genocide can be committed by non-state actors as well, focusing on the intent behind the commitment of the crime while making it clear that the persons involved can be 'private individuals', implying that it is not necessary that the crime is necessarily state inflicted This widens the scope for punishment and reduces changes for legal restrictions and ambiguities. The most important article that puts an obligation upon the member states to punish and prevent the crime of genocide is the Article V of the convention. It states, 'The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.'

This obligation has resulted in enactment of special laws on genocide in about 85 member states already. In the world where politics thrives on early stages of genocide such as classification, it means a great deal to have constitutional protection and guarantee against the commitment of such a crime like genocide. Thus, the Genocide Convention 1948 is one of the most remarkable contributions of mankind to make a global resistance against the crime of genocide into a possibility.

"One of the worst sufferers of genocidal attrition in India are the Kashmiri Pandits. The community has not just been subjected to the ultimate crime only in 1989-1990 resulting in their extermination from their native land, but have been reduced to a miniscule population exiled and spread across the world as a result of a continual genocide of 700 years."

### India's Role, Response & Responsibility

After many disappointments from the rest of the word, Dr Lemkin finally met with a delegation of three nations - Cuba, Panama and India that came together to support him in proposing a resolution on genocide crime and eventually sponsor the 'UN Genocide Conention of 1948'. This was the first step in bringing together a world consensus on an international law on genocide crime. India did not only play a leadership role in the convention but also showed its resolve as a nation that would come forward for such a cause, not forgetting that India attained its independence from British rule only in 1947, a year prior it co-sponsored the convention. The Genocide Convention became the first human rights treaty to be passed unanimously by the vote of 55-0 during the third session of the United Nations General Assembly in Paris on the 9th of December 1948. It needed 20 nations to ratify for it to become an international law. It later came into effect on 12th of January, 1951. India became a signatory to the convention in November 1949 and ratified the convention on 27th August, 1959. Dr Lemkin died of a heart attack in New York on 28th August 1959, just a day after India ratified the convention.

The United States of America, the nation that wanted to be looked upon as a super power and the torch bearer for human rights ratified the Genocide Convention in 1988, becoming the 98th country to ratify the convention. However, ever since ratification of the convention, India has not fulfilled its obligation to enact a law on genocide. What makes the hopes of the hopeful thinner is the fact that twice in the recent years; the Ministry of Home Affairs has in implication said that there is no plan to enact a specific law on genocide. The question to the Home Ministry to know whether there was a plan to enact a law on genocide, was raised in Rajya Sabha first by Avinash Pandey, a member of parliament from Maharashtra from the Indian National Congress on the 13th May 2015 which was answered by then MoS Home Ministry, Haribhai Parthibhai Chaudhary who has said in his answer that the information was being collected. Later on the repetition of the question by MP Avinash Pandey, then Minister of State for Home Affairs, Kiren Rijiju answered, "By accedingto the Convention on the Prevention and Punishment of the Crime of Genocide in 1959, India has recognized genocide as a global crime. The principles embodied within the Convention are a part of the general law of nations and so already part of the common law of India. The provisions of Indian legal code including the procedural law (Criminal Procedure Code) provide effective penalties for persons guilty of the crime of genocide and take cognizance of the acts which can be otherwise taken to be within the nature of genocide".

Second to seek an answer on the possible enactment of a law on genocide was Member of Parliament from Mallapuram, Kerala -Abdul Wahab. To his question, the MoS for Home Affairs, Nityanand Rai repeated the exact same answer as his predecessor Kiren Rijiju. Thus, we can say that the current dispensation has a clear stand of having no plans to bring into effect a special law to punish and prevent the crime of genocide in India and that it relies completely on the prevalent laws to address such a crime.

### Panditocide: A fit case to inspire change

One of the worst sufferers of genocidal attrition in India are the Kashmiri Pandits. Thecommunity has not just been subjected to the ultimate crime only in 1989-1990 resulting in their extermination from their native land, but have been reduced to a miniscule population exiled and spread across the world as a result of a continual genocide of 700 years. Phenomenal and path breaking research by the Director of Jonaraja Institute of Genocide & Atrocities, Dr Dileep Kaul brought to light the recorded textual evidences of this continual genocide in Dwitiya Rajatarangini of Pandit Jonaraja. Pandit Jonaraja gave the term 'Jati-Vidhans' to the crime that we today know as - genocide, about six centuries before the term 'genocide' was coined by contemporary scholar and pioneer of Genocide Convention, Dr Raphael Lemkin. Besides recording, chronicling and analyzing genocide inflicted upon the indigenous Kashmiri Pandit (Bhatt Brahmin) community by proselytiser Islamic rulers, Pandit Jonaraja in the 606th verse of the Dwitiya Rajatangini writes,

*contd. on next page*

**jātidhvamse marisyāmo dvijesviti vadatsvatha**
**jātiraksānimittam sa tāndurdandamajigrahata**

This essentially means that the brahmins (Kashmiri Pandits) chose to pay the fine of Jaziya to the Islamic rulers to protect their identity and culture instead of converting to Islam as that would be death for them. Here we notice the sanskrit term 'jātirak ānimitta ' which translates to 'for the protection of Jati or cultural identity'. This term therefore contains the spirit of 'prevention of genocide' which is a guiding force of the Genocide Convention. The adversities, measures and political reality of history and contemporary times may be contrasting but the spirit of prevention as the ultimate goal of a framework is seen to be constant. We can fairly say that the Indic thought of India has historically provided a spirit that the world has come to accept as a universal response in this case. So, it is not merely a contractual obligation to the UN Genocide Convention but the obligation also to the Indic ideals that lead the world today.

Quite consciously the reason, Jonaraja Institute decided to have 'jātirak ānimitta ' as its motto. Despite various deliberations and three decades of exhausting every single remedy available, the genocide of Kashmiri Pandits has not yet been officially been recognized by the Indian state. To be fair, there have been many instances, where the current BJP ruled central government has shown its willingness to recognize genocide. Whether it is in the press statement of the then Home Secretary Rajiv Gauba while putting a ban on terror outfit JKLF in 2019 or Sr. PP of the NIA in the NIA court admitting that the convict Yasin Malik (in terror funding case) was responsible for genocide of Kashmiri Pandits, there are many occasions where the representatives of the ruling party Bharatiya Janata Party, have recognized the genocide of Kashmiri Pandits. The official recognition by the government of India will mean that the perpetrators are identified and punished, and the genocide is prevented. But, the absence of a specific law had proven to be an impediment for the case to be taken to its logical conclusion hence proving that the prevalent laws have been insufficient to deal with, or take due cognizance of the crime in the past 33 years.

As a first of its kind, a draft bill titled 'Panun Kashmir's Genocide and Atrocities Prevention Bill 2020' was proposed by the Kashmiri Pandits' frontline organization - Panun Kashmir to the govt. of India for its consideration as a framework to frame a law on genocide. The bill is drafted in harmony with the Indian Constitution, and nuanced on the basis of case study of Kashmiri Pandit genocide and suggests legal measures to counter genocide crime in India. The bill has also been sent to Members of the Indian Parliament to seek their support. Even though the Ministry of Home Affairs has, on two occasions in the Rajya Sabha, clearly negated the plan toenact a specific genocide law, the ineffectiveness of prevalent laws to address 'the crime of crimes' has proven that the proposed draft bill must be taken into serious consideration in order for India to fulfil the commitment towards her great Indic ideals.

**Nitin Dhar**

# QnA with the scholars of JIGAS

**Virender Dev Singh**

**Please tell us a little bit about yourself?**
My name is Virender Dev Singh, a practicing advocate in the High Court of Jammu and Kashmir since 2008. Over the years, I have established myself as a skilled litigator and provided effective and efficient legal representation to my clients. I take pride in my ability to adeptly handle complex cases involving criminal and Constitutional matters.

**How did you hear about JIGAS and why did you apply for the Genocide studies program?**
I decided to apply for the Genocide Studies program at JIGAS due to my significant involvement as part of the drafting team for a proposed Genocide and Atrocities Bill. Recognizing the importance of this legal initiative, I felt compelled to deepen my knowledge and grasp of genocide in its various manifestations. As a result, all members of the team, including myself, were enrolled in the pilot course on the Genocide Studies program at JIGAS. This program offered us a comprehensive understanding of the historical context, underlying causes, and far-reaching consequences of genocide. Additionally, it provided invaluable insights into the utilization of legal frameworks aimed at preventing and addressing these heinous crimes.

**What expectations did you have before you joined the program? Were those expectations met?**
Tito Ganju is widely recognized as an esteemed scholar, and any program under his guidance is held in high regard for its exceptional quality. Amongst the academic community, particularly in the field of law, the expectations associated with his programs are exceedingly high. Mr. Ganju consistently surpasses these expectations, establishing a reputation for delivering extraordinary outcomes.

One notable aspect of the program is the introduction of Dr. Dileep Kaul's Indic concept, which has significantly enriched the scholarly discourse. This innovative concept has opened up new avenues for learning, providing fresh insights to scholars seeking a deeper understanding of historical events. By incorporating this concept into the program, it has become a remarkable opportunity for those interested in history and driven to make a positive impact on the world.

**What did you think about the curriculum that you were taught?**
At JIGAS, the Genocide Studies program offers scholars a comprehensive educational experience focused on gaining a thorough understanding of the various forms of genocide. The program is strategically designed to provide students with the necessary knowledge and skills to analyze, prevent, and address these heinous crimes effectively.

**Did the program empower you to speak about forgotten genocides on national and international platforms?**
Through the program, I have acquired a deeper comprehension of the historical, political, and social dimensions underlying genocide. Additionally, I have gained valuable insights into the legal frameworks that play a crucial role in both preventing and responding to these atrocities. Equipped with this enriched understanding, I now feel better prepared to advocate for the victims of genocide and actively contribute to the pursuit of justice and accountability for these grave offences. Personally, this program has empowered me to confidently address forgotten genocides on both national and international platforms

# Research

with
**Dr. Neha Kachroo**

**Dr. Neha Kachroo** as part of her research on genocide of Kashmiri Pandits sought to find out how displacement from Kashmir may have changed the living conditions of survivors. She conducted this research in government camps of Jammu where genocide victims were forced to live after being thrown out of their homes.

## MAJOR FINDINGS OF THE STUDY

Keeping in mind the present study, the Master's dissertation work and internship experience with a non-governmental organization 'Young India' supported by UNICEF (United Nations International Child Emergency Fund) and informal discussion with displaced Kashmiris, camp school teachers, camp doctors and camp zonal officers, Dr. Kachroo puts forward the following recommendations.

### A) Improvement with present living conditions

- Increase in the size of the room
- Kitchen separated from the living area
- More community toilets and bathrooms
- Fencing to separate homes from outside areas
- Proper and smooth roads
- Chlorination of water to prevent water borne diseases
- Shopping complexes with new technological items

### B) Educational benefits

- Provide proper infra-structural facilities:
- Adequate classrooms with classroom necessities like black boards, chalks, dusters
- Furniture like tables and chairs
- Sanitation facilities like toilets
- Well equipped laboratories
- Libraries
- Guards provided to all camp schools
- Supply of textbooks and other school supplies to poor students
- Compulsory attendance of displaced kashmiri students in camp schools and colleges
- Scholarships to meritorious students of camp schools and colleges
- Personality development courses for students and teachers of camp schools and colleges
- Diploma courses to be made available to students who lack higher technical education
- Free or subsidized computer courses for students and teachers of camp schools and colleges
- Percentage relaxation for admission of displaced kashmiri students to technical education in various institutions.

### C ) Occupational benefits

- Releasing promotions of displaced kashmiri employees which had been frozen for the past twelve years
- Age relaxation in jobs
- Speedy release of pension
- Provision of loans to start small--scale business
- Income generating schemes
- Self employment programmes
- Entrepreneurship courses
- Increased job opportunities for the unemployed
- Special job opportunities for displaced kashmiri women.

### D) Financial benefits

- Provision of sufficient monthly allowances
- Increase in rations
- Payment of compensation for the loss of property whether movable or immovable
- Financial assistance for better sustenance especially for displaced business families
- Provision of insurance policy

### E) Medical benefits

- Communication facilities like telephones provided at health centres during emergency
- Counsellors to handle emotionally weak persons
- Home visits by health personnel to make people aware of health and sanitation
- Free camps for general medical checkups
- Free or subsidized medical aids like spectacles, dentures, and wheel chairs to needy persons
- Exercise, yoga and meditation centres

### F) Recreational benefits

- Common television sets in the community centres
- Facilities for indoor and outdoor games
- More parks within camps
- Picnics for teachers and students of camp schools and camp colleges

### G) Preservation of socio-cultural norms

- Organizing religions functions like Navreh, Shivratri, Zaramasatam in community centres
- Organizing social functions in community centres
- Organizing cultural programmes emphasizing traditional dress and costumes such as fashion shows

Even after so many centuries, women still lag behind men. Women become more vulnerable during crisis time, like displacement. Therefore displaced kashmiri women need to be given special benefits during the present crisis time to lessen their problems and sufferings.

- More allowance like life insurance policies and other general insurance policies
- Loans at reduced interest rate to encourage self-employment
- Job reservation in central government and other public sectors
- Exposure to more occupational skills
- Short-term income generating diploma courses

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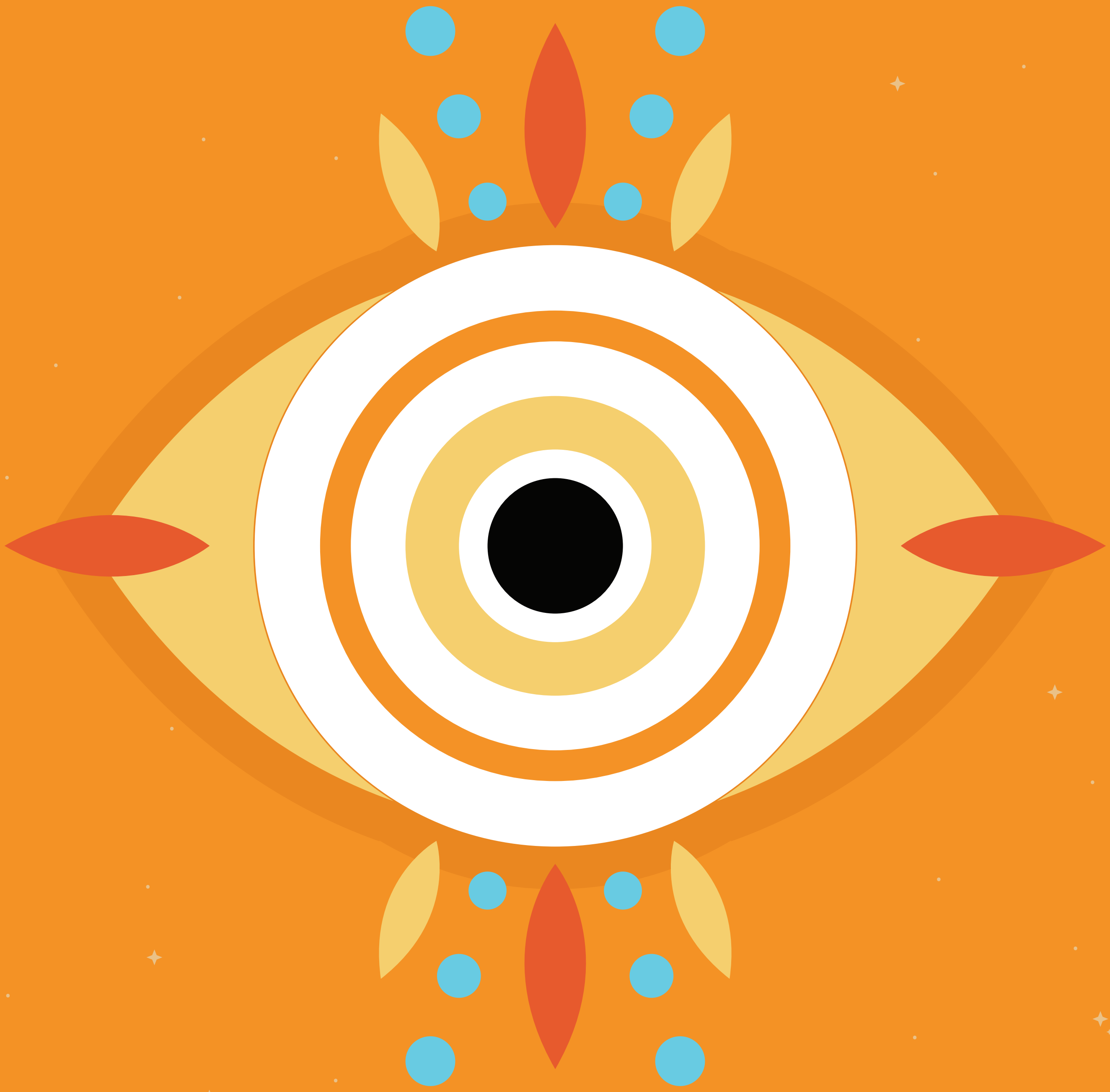

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